IN THE

Supreme Court of the United States

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No.

HUNTER MILLS CORPORATION, a corporation, and WILLIAM TRAKINSKI and SIMON TRAKINSKI, individually, and as Officers of said corporation, *Petitioners*

v.

FEDERAL TRADE COMMISSION, *Respondent*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Alex Akerman, Jr. and Thomas A. Ziebarth, on behalf of Hunter Mills Corporation, William Trakinski and Simon Trakinski, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Second Circuit, entered in the above captioned case on December 8, 1960, denying petitioners' petition to set aside an order of the Federal Trade Commission.

OPINIONS BELOW

The opinion of the court below is set out at page 1a of the Appendix hereto. It is reported at 284 F. 2d. 70. The decision of the Federal Trade Commission is set out at page 20a of petitioners' appendix printed for use in the court below and the hearing examiner's initial decision is set out at page 11a thereof.

JURISDICTION

The jurisdiction of the Supreme Court of the United States is invoked pursuant to Title 28 USC § 1254 (1).

QUESTIONS PRESENTED

Whether the United States Court of Appeals for the Second Circuit erred in holding:

1. That a Federal Trade Commission order to cease and desist may be based on one person's laboratory tests when an expert produced by the Commission testified that these tests were conducted under improper conditions;

2. That the Federal Trade Commission may in its discretion require petitioners to cease and desist from violations of certain subsections of the Wool Products Labeling Act of 1939 expressly found by the hearing examiner not to have been violated.

STATUTE INVOLVED

The Wool Products Labeling Act of 1939 (54 Stat. 1128; 15 USCA § 68 et seq.) provides in pertinent part:

"MISBRANDED WOOL PRODUCT:

Sec. 4. (a) A wool product shall be misbranded—

(1) If it is falsely or deceptively stamped, tagged, labeled, or otherwise identified:

(2) If a stamp, tag, label, or other means of identification, or substitute therefor under Section 5, is not on or affixed to the wool product and does not show—

(A) The percentage of the total fiber weight of the wool product, exclusive of ornamentation not exceeding 5 per centum of said total fiber weight, of (1) wool; (2) reprocessed wool; (3) reused wool; (4) each fiber other than wool if said percentage by weight of such fiber is 5 per centum or more; and (5) the aggregate of all other fibers. * * *

(B) The maximum percentage of the total weight of the wool product, of any nonfibrous loading, filling, or adulterating matter.

(C) The name of the manufacturer of the wool product and or the name of one or more persons subject to section 3 with respect such wool product."

"GUARANTY

SEC. 9(a) * * *

(b) Any person who furnishes a false guaranty except a person relying upon a guaranty to the same effect received in good faith signed by and containing the name and address of the person residing in the United States by whom the wool product guaranteed was manufactured and or from whom it was received, with reason to believe the wool product falsely guaranteed may be introduced, sold, transported, or distributed in commerce, is guilty of an unfair method of competition, and an unfair and deceptive act or practice, in commerce within the meaning of the Federal Trade Commission Act. * * *"

STATEMENT OF THE CASE

Petitioners are Hunter Mills Corporation, a New York corporation located at 60-01 27th Avenue, Woodside, Long Island, New York, and William and Simon Prakinski, President and Secretary-Treasurer, respectively, of this corporation.

In a complaint filed on February 6, 1959, the Federal Trade Commission charged petitioners with misbranding certain wool products in violation of Sections 4 (a) (1) and 4 (a) (2) of the Wool Act. They were further charged with the furnishing of false guarantees in violation of Section 9 of the Wool Act. The product involved is wool batting used as the filling in inexpensive quilted interlining materials.

Counsel in support of the complaint introduced eight sample swatches of batting manufactured by petitioners in evidence. (Commission Exhibit No. 1-8, inclusive). The Commission's counsel produced two witnesses who testified as to the purported wool content of these samples.

The first such witness was Miss Marjorie A. Molloy, a chemist employed by the Federal Trade Commission. She performed all the tests on the Commission Exhibits except for Exhibit No. 5.

The second witness was William H. Masterson who testified as to the test of Commission Exhibit 5 conducted by the Better Fabrics Testing Bureau of New York City. The only evidence purporting to support the charge of misbranding was the testimony of these two witnesses.

Petitioners filed a motion to strike a portion of the testimony of Masterson on the ground that it disclosed that he neither performed the tests in question nor

were they performed under his supervision, and to strike the testimony of Miss Molloy because her tests were improperly conducted.

In his initial decision the hearing examiner denied the motion to strike *in toto*. The Commission on appeal reversed the hearing examiner with respect to the Masterson test, but sustained him with respect to the tests conducted by Miss Molloy.

The hearing examiner found no violation of Section 4 (a) (2) (B) of the Wool Act and specifically noted that petitioner complied with § 4 (a) 2 (C). He limited the order in his initial decision to inhibitions relating to Section 4 (a) (2) (A) and (B). Cross appeals were filed by respective counsel, and the Commission in granting the appeal of counsel supporting the complaint, issued an order to cease and desist in language which would inhibit violation of any of the Subsections of Section 4 (a) (2), *including* Subsection (C).

Petitioners subsequently sought a review of the Commission's decision and order and on December 8, 1960, the United States Court of Appeals for the Second Circuit rejected each of petitioners' contentions and affirmed the decision and order of the Federal Trade Commission.

ARGUMENT

1. Tests Improperly Conducted

The Federal Trade Commission's case was based solely on the testimony of two expert witnesses, each of whom agreed as to the type of chemical test which should be used to determine the quantitative wool content of a piece of fabric. However, they differed sharply as to manner in which the sample being tested

should be handled so as to avoid great losses of fibers in the process. The Commission's witness, Marjorie A. Molloy, tested seven samples of petitioners' product, using the standard "boil-out" test. Prior to making these tests the witness washed and rinsed the samples "at least seven or eight times in warm water," and in doing so used her hand as a strainer.

The Commission subsequently called a second expert, William H. Masterson, witness at a hearing in New York on June 23, 1959. A graduate of Bradford Durfee Technical Institute, Fall River, Massachusetts, he has been a specialist in the testing of textile products for 27 years, having been employed during all this time by Better Fabrics Testing Bureau, New York. Masterson's expert qualifications are conceded by petitioners.

Masterson's testimony regarding the tests performed by his laboratory was rejected by the Commission in its opinion on the grounds that he did not personally perform them nor were they performed under his immediate supervision. However, Masterson's testimony regarding his own expert qualifications and the proper method of handling the material and conducting the tests in question stands. The Commission and the Hearing Examiner specifically found Masterson to be an expert possessing the highest qualifications.

Commissioner Tait, speaking for the Commission in its Opinion, stated that Masterson, ". . . with 27 years' experience in the testing of yarns, fabrics, and garments, obviously is an expert in his field."

Any testimony given by this witness in his area of specialization must necessarily be accorded great weight.

Masterson was questioned at length as to the proper method of handling and washing the samples to be tested by the standard "boil-out" method. The following excerpt from his testimony is significant:

By Mr. Akerman on cross examination:

Q. You don't pick it up in your hand and rinse it?
A. No.
Q. There would be a great loss that way?
A. That's right.

By Mr. Howder on Redirect examination:

Q. Do you really mean to say that there would be a great loss in washing,—
A. In handling.

Mr. Akerman: I object to the question, Counsel cannot impeach his own witness.

Mr. Howder: I am not attempting to impeach. I am merely trying to clarify,—

Hearing Examiner Cox: He said there would be a loss. He may explain it.

A. Usually batting is very, very loose. As soon as you get the cheesecloth off here, these fibers are not held together with any adhesive bond or anything like that. Usually, in the case of a felt, you would have an adhesive bond holding it together. If you take these out and handle them or shake them or anything like that, you would have a tendency to lose fiber.
Q. Do you mean that if you were not careful there could be a loss?
A. That is absolutely true. We don't handle them that way.
Q. If someone were careful,—
A. There would be very, very little loss.

What the witness meant by his answer to the last question is clear. Throughout his testimony, Masterson described in extensive detail just how the tests were performed at *his* laboratory. His testimony establishes exactly what *he* meant by being "careful," and this very specifically excluded using the hand as a strainer in the washing operation. As he put it, "We don't handle them that way." By giving sound, practical reasons for his opinion, Masterson's testimony is entitled to greater weight. *Maul* v. *Iowa-Nebraska Light and Power Co.*, 288 N. W. 532, 135 Neb. 128. It is significant that the witness, Molloy was never brought back to testify as the care (or lack of it) she exercised in handling the samples to be tested in the light of Masterson's testimony.

The effect of Masterson's testimony was to destroy evidentiary value of the Molloy tests. Where the Commission's own expert witness presents an irreconcilable view as to the reliability and probative value of evidence, it fails to sustain its burden of proof. *Knopf* v. *Delaware County*, 140 A. 903, 292 Pa. 237; 32 C.J.S., Evidence, Sec. 572. Since he was the Commission's own expert witness, his testimony is all the more compelling. It is significant that the Commission in its opinion did not question the qualifications of Masterson, but rather underscored them. The testimony of the expert with the greatest experience and most specialized knowledge is entitled to the greater weight. *U.S.* v. *Benedict*, 280 F. 76, affirmed, 261 U.S. 294.

The Commission cannot have it both ways. There is conflict as to proper scientific procedure which is incapable of resolution. An administrative agency should not at the same time proclaim one expert's qualifica-

tions and render a decision based solely on another person's test which were not conducted in accordance with that expert's opinion.

The court below, in reviewing the Commission's decision, gratuitiously concluded:

> ". . . Moreover, it is unlikely that the allegedly "proper" procedure would have changed the ultimate fact finding, since the percentages of wool content were substantially below those permitted by statute."

The court accepts as true the ultimate conclusions of fact which could have been established only by valid laboratory tests. It is petitioners' position that the unfavorable results of the Molloy tests were due solely to her improper handling of petitioners' product *before* her laboratory tests.

As a result of her improper handling of the exhibits the tests she subsequently performed lost their evidentiary value. It was no longer petitioner's product that was being analyzed, but rather a fibrous mass, which had undergone substantial changes in content due to a "great loss of fibers" in handling and washing.

2. Scope of the Order

Assuming *arguendo* that the evidence supports the conclusion of the Commission that the law has been violated, petitioners submit that the scope of the proposed order to cease and desist is unreasonably broad in its prohibitions.

Section 4 (a) of the Wool Act calls for three affirmative elements of information which must be placed on labels:

> (1) Subsection 4 (a) 2 (A) requires that the percentages of woolen and non-woolen fibers be set forth;

(2) Subsection 4 (a) 2 (B) requires disclosure of the percentage of non-fibrous loading, filling or adulterating matter; and

(3) Subsection 4 (a) 2 (C) requires that the label bear the manufacturer's name or its legal substitute.

The complaint in the instant case, although it alleges violations of Sec. 4 (a) 2 generally, is addressed only to subsection 4 (a) 2 (A). There is not a scintilla of evidence to show a violation of Subsection 4 (a) 2 (B) and as to Subsection 4 (a) 2 (C) the hearing examiner specifically found complete compliance (R-72).

The principles set forth in *FTC* v. *Mandel Bros., Inc.*, 359 U.S. 385 (1959), correctly delineate the Commission's discretionary power in this respect.

The question before the court in the *Mandel* case was not whether the FTC should in *all* cases "fence in" a violator by enjoining like or related acts of misbranding, even though there had been no evidence of this particular type of misbranding.

The question was simply: Did the Commission abuse its wide discretion in its choice of remedy to cope with the unlawful practices as found? Speaking for the court, Mr. Justice Jackson said:

> "One cannot generalize as to the proper scope of these Orders. It depends on the *facts of each case* and a judgment as to the extent of which a *particular violator* should be fenced in." (Emphasis Supplied).

This Court considered the facts in the *Mandel* case important enough to include a summary of the instances of misbranding in a footnote. (Note 8). It

stated that among the violations found by the Commission were: 12 instances of failure to name the animal producing the fur; 15 instances of failure to disclose that a fur product was dyed; 58 instances of failure to reveal the country of origin; and 187 other violations of Rules under the Fur Products Labeling Act relating to labeling requirements.

The Court stated further:

> "Where the episodes of misbranding have been so *extensive and so substantial in number* as they were here we think it is permissible for the Commission to conclude that like and related acts of misbranding should also be enjoined as a prophylactic and preventive measure." (Emphasis Supplied)

In the instant case the Commission found only 7 instances of alleged misbranding and these were cumulative rather than different kinds of violations.

To permit the order proposed by the Federal Trade Commission to stand is, in effect, to find petitioners guilty not only of misstating the wool content but of adulterating their product and failing to disclose its origin.

Clearly, these are not the "related acts of misbranding" within the contemplation of the *Mandel* case, supra. It is one thing to err slightly in stating the ratio of woolen and non-woolen fibers. It is quite another to add nonfibrous substances or ship the product anonymously.

The only relationship that the requirements contemplated by these subsections bear to one another is the accident of physical proximity within the same section of the Act.

No actual or threatened violations of these subsections has been shown. It would be a grave injustice to petitioners to require them to cease and desist from committing illegal acts they have never done nor contemplated doing.

CONCLUSION

Petitioners submit that there is no reliable, probative or substantial evidence to support the charge of misbranding under the Wool Act, and that the Federal Trade Commission and the court below erred in issuing and affirming the order to cease and desist.

Petitioners further submit that the scope of the order to cease and desist is unjustifiably broad in the light of the limited number and type of violations alleged, and their unrelated character.

Petitioners therefore pray that this writ of certiorari issue.

Respectfully submitted,

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APPENDIX

APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 83—October Term, 1960

(Argued November 18, 1960 Decided December 8, 1960)

Docket No. 26239

HUNTER MILLS CORPORATION, a corporation, and WILLIAM TRAKINSKI and SIMON TRAKINSKI, individually and as officers of said corporation, *Petitioners*,

v.

FEDERAL TRADE COMMISSION, *Respondent*.

Before:

LUMBARD, *Chief Judge*,
WATERMAN and MOORE, *Circuit Judges*.

Petition under § 5 of the Federal Trade Commission Act, 15 U.S.C. § 45, to set aside an order of the Commission entered pursuant to findings of violations of §§ 4(a)(2) and 9 of the Wool Products Labeling Act 15, U. S. C. §§ 68b(a)(2), 68g.

Denied, and enforcement granted.

THOMAS A. ZIEBARTH, Washington, D. C. (Alex Akerman, Jr., Shipley, Akerman and Pickett, Washington, D. C., on the brief), *for petitioners*.

THOMAS F. HOWDER, Washington, D. C. (Daniel J. McCauley, Jr., General Counsel, Alan B. Hobbes, Assistant General Counsel, Jno. W. Carter, Jr., Attorneys for the Federal Trade Commission, on the brief), *for respondent*.

PER CURIAM:

The petitioners, a family-owned corporation engaged in the manufacture of batting or quilting used for interlining material, and its two stockholders, bring this proceeding

under § 5 of the Federal Trade Commission Act, 15 U. S. C. § 45, to review a Commission order of February 17, 1960. At a hearing on charges of misbranding in violation of §§ 4(a)(1), 4(a)(2), and 9 of the Wool Products Labeling Act of 1939, 15 U. S. C. §§ 68(a)(1), 68(a)(2), 68g, the hearing examiner allowed into evidence eight samples of the petitioners' materials, seven of which had been tested for fiber content by a chemist employed by the Federal Trade Commission. The testing of the eighth sample was supervised by a textile engineer employed by the Better Fabric Testing Bureau of New York. These experts described their testing procedures and testified that the samples marked as 100% reprocessed or reused wool in fact contained between 82% and 92.3% wool, the remainder being nylon, rayon, acetate and other miscellaneous fabrics. This percentage fell below the 5% tolerance for ornamentation permitted by § 4(a)(2)(A), and the number of samples indicated that the deviation was not due to "unavoidable deviations in manufacture." The examiner therefore ordered the petitioners to cease and desist from misbranding in violation of §§ 4(a)(2)(A) and 4(a)(2)(B), and furnishing false guarantees in violation of § 9.

On appeal from the decision of the examiner, the Commission modified the examiner's findings by deleting all reference to the sample which had been tested under the supervision of the New York expert since he did not personally perform the tests. It also modified the examiner's order by proscribing violations of all of § 4(a)(2).

The petitioners' attack on the tests conducted by the Commission's chemist, who had previously performed 700 or 800 similar tests during her two years with the Commission, is devoid of merit. The variance in testing techniques between the two experts testifying for the Commission does not impeach the testimony of either. The Commission has the duty of passing on the qualifications of the experts who testify before it, and it may decide

that both procedures are proper. *FTC* v. *Cement Institute*, 333 U. S. 683, 716 (1948). See also *Corn Products Refining Co.* v. *FTC*, 324 U. S. 726, 739 (1945); *Carter Products, Inc.* v. *FTC*, 268 F. 2d 461, 496 (9th Cir. 1959), cert. denied, 361 U. S. 884. Moreover, it is unlikely that the allegedly "proper" procedure would have changed the ultimate fact-finding, since the percentages of wool content were substantially below those permitted by statute.

The petitioners further contend that the order could not require them to desist from violations of § 4 (a)(2)(C) of the Act—which requires that the manufacturer's name be affixed to the wool product—when the trial examiner found expressly that the labels on their products conformed to that subsection. However, the Commission has wide discretion in choosing the remedy adequate for each particular situation, and we cannot say that it constituted an abuse of discretion to decide that related acts of misbranding were likely enough to warrant strong preventive measures. *FTC* v. *Mandel Bros., Inc.*, 359 U. S. 385 (1959).

The petition to set aside the Commission's order is denied and an order directing obedience pursuant to § 5(c) of the Federal Trade Commission Act will issue.

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JAMES R. BROWNING, Clerk

No. 786

In the Supreme Court of the United States

OCTOBER TERM, 1960

HUNTER MILLS CORPORATION, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

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Statute:

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In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 786

HUNTER MILLS CORPORATION, ET AL., PETITIONERS

v.

FEDERAL TRADE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE FEDERAL TRADE COMMISSION IN OPPOSITION

OPINIONS BELOW

The opinion of the Court of Appeals (Pet. 1a-3a) is reported at 284 F. 2d 70. The opinion and order of the Federal Trade Commission (Pet. App. 20a-30a)[1] have not yet been reported.

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[1] "Pet. App." refers to the printed appendix to petitioner's brief and "Resp. App." to the printed appendix to respondent's brief in the court below.

JURISDICTION

The judgment of the Court of Appeals was entered on December 8, 1960 (Pet. 1a). The petition for a writ of certiorari was filed on March 7, 1961. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

The Commission found that petitioners had violated Section 4(a)(2) and Section 9 of the Wool Products Labeling Act by misbranding and falsely guaranteeing certain of their woolen batting materials as 100% reprocessed or reused wool. The Commission concluded that misbranding constituted such an integral part of petitioners' business practices that an order prohibiting violations of all of the labeling provisions of Section 4(a)(2) was reasonably necessary to correct the abuses found to exist, even though the examiner found that petitioners had not violated one of the provisions. The questions presented are:

1. Whether the Commission's findings of misbranding are supported by substantial evidence.

2. Whether the Commission could lawfully proscribe violations of all of Section 4(a)(2), even though petitioners' labels had been found not to violate one of its requirements.

STATUTE INVOLVED

The pertinent provisions of the Wool Products Labeling Act (54 Stat. 1128, 15 U.S.C. 68 *et seq.*) are set out in the petition (pp. 2-3).

STATEMENT

Petitioners, a New York corporation and its two principal officers and stockholders, are engaged in manufacturing and selling in interstate commerce plain and quilted batting for use in the garment industry as interlining material for suits and coats (Pet. App. 23a). Manufactured from clippings of old clothing and cuttings of new cloth, petitioners' products are composed of wool or wool mixed with other fibers (Pet. App. 14a). The Commission's complaint charged petitioners with violating Section 4 (a) (2) of the Wool Products Labeling Act by branding their interlining products as 100% reprocessed or reused wool when in fact they were not all wool but contained a substantial quantity of non-woolen fibers (Pet. App. 3a); and with violating Section 9 of the Act by furnishing false guarantees to many of their customers that the products were not misbranded (Pet. App. 3a-4a).

At the hearing eight samples taken from different bolts of petitioner's fabrics were admitted into evidence. Seven of the samples had been personally tested for fiber content by a chemist employed by the Commission. With respect to the eighth sample, the Commission's expert witness, a textile engineer employed by the Better Fabrics Testing Bureau of New York, testified that he had merely supervised the fiber content test and had not personally performed it. These witnesses described the standard chemical procedures for determining the fiber composition of woolen fabrics and testified that the samples labeled and in-

voiced as 100% reprocessed or reused wool actually contained between 82.0% and 92.3% wool, with fibers other than wool ranging in amounts from 7.7% to 18% of total fiber content. The hearing examiner denied petitioners' motion to strike this expert testimony (Pet. App. 16a). He pointed out that these percentages were far beyond the 5% margin for error permitted by the Act, and that petitioners, who introduced no evidence on their behalf, had made no showing under the exculpatory provisions of Section 4(a)(2)(A) of the Act that "unavoidable variations in manufacture were the cause of [their] mislabeling practices" (Pet. App. 17a). The examiner also found that petitioners had furnished false guarantees that the materials were not misbranded (Pet. App. 18a). He concluded, however, that, contrary to the allegations of the complaint, petitioners had complied with Section 4(a)(2)(C) of the Act, requiring identification on the label of the product's manufacturer (Pet. App. 18a). He ordered petitioners to cease and desist from the misbranding and false guarantee violations found (Pet. App. 18a-19a).

On cross appeals, the Commission reversed the hearing examiner's denial of the motion to strike the expert testimony covering the fabric sample tested under the supervision of the Better Fabrics Testing Bureau engineer (Pet. App. 20a-21a). But it affirmed the examiner's findings of misbranding, on the basis of the evidence with respect to the seven samples personally tested by the Commission's chemist. The Commission also broadened the scope of the cease-and-desist order to prohibit violations of all

the labeling requirements of Section 4(a)(2), on the ground that since "the incidents of misbranding have constituted integral parts of the [petitioners'] over-all method of doing business * * *" an order directing full compliance with the labeling requirements of the statute in the future is fully justified" (Pet. App. 29a-30a.)

The court of appeals affirmed *per curiam* (Pet. 1a-3a). It held that the Commission was justified in relying on the tests performed by its chemist, and that the agency did not abuse its "wide discretion in choosing the remedy adequate for each particular situation * * * [in] decid[ing] that related acts of misbranding were likely enough to warrant strong preventive measures."

ARGUMENT

1. Petitioners' contention (Pet. 5-9) that the Commission improperly relied on the tests performed by its chemist because the other expert followed a slightly different testing technique[2] is without merit, and

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[2] Both experts employed the standard "boil out" or "caustic" method for determining the fibre content of fabrics. They both followed the preliminary step of thoroughly washing the sample fabric to remove any dirt or foreign particles that could affect the ultimate comparison of the original weight of the fabric with that of the residue after all the woolen fibers had been chemically dissolved. They both agreed that unless the samples were carefully handled during this and subsequent cleansing processes some of the shorter woolen fibers could be lost, resulting in an apparent increase of the percentage of non-woolen fibers. The only difference in the testing was that at the Better Fabrics Test-

plainly presents no question warranting further review. For, as the court of appeals pointed out (Pet. 2a-3a), "[t]he variance in testing techniques between the two experts testifying for the Commission does not impeach the testimony of either. The Commission has the duty of passing on the qualifications of the experts who testify before it, and it may decide that both procedures are proper". *Federal Trade Commission* v. *Cement Institute*, 333 U.S. 683, 716; *Corn Products Refining Co.* v. *Federal Trade Commission*, 324 U.S. 726, 739; *Carter Products, Inc.* v. *Federal Trade Commission*, 268 F. 2d 461, 496 (C.A. 9), certiorari denied, 361 U.S. 884.

We submit that the Commission was fully justified in relying upon the tests made by its expert chemist. She had performed the same type of test 700 to 800 times, recognized the importance of careful handling of the samples to avoid loss of fibre content, and was certain that any fibre loss in her tests was insignificant and could not possibly account for the foreign matter in the allegedly "all-wool" samples that ranged from 7.7% to 18.0% (Resp. App. 17a, 19a). While she washed and weighed the samples by hand (unlike the Better Fabrics Testing Bureau, where this was done by tweezers), this fact did not render her tests unreliable. Indeed, the Better Fabrics Testing Bureau witness agreed that if the samples were handled carefully "there would be very, very little loss" of fiber content (Resp. App. 23a). Moreover,

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ing Bureau the washing and weighing was done with tweezers, while at the Federal Trade Commission the samples were washed and rinsed by hand.

as the court of appeals noted, "it is unlikely that the allegedly 'proper' procedure would have changed the ultimate fact-finding; since the percentages of wool content were substantially below those permitted by statute" (Pet. 3a).

2. Petitioners also contend (Pet. 9-12) that the Commission erred when it broadened the scope of the order by proscribing violations of all of the misbranding provisions of Section 4(a)(2), notwithstanding the examiner's finding that petitioners' labels conformed to the requirement that the name of the manufacturer be revealed. But the Commission has a wide discretion to enjoin similar or related acts if necessary to prevent future occurrence of the unlawful practices found to exist. *Federal Trade Commission* v. *Mandel Bros.*, 359 U.S. 385, 392-93; *Federal Trade Commission* v. *National Lead Co.*, 352 U.S. 419, 428-29; *Jacob Siegel Co.* v. *Federal Trade Commission*, 327 U.S. 608, 611-13. As this Court pointed out in the *Mandel* case, *supra*, at 392, which involved the similar labeling provisions of the Fur Products Labeling Act:

> The practice outlawed by § 4 [of that Act] is "misbranding." The disclosure required for a properly branded garment is specified. These disclosure requirements are so closely interrelated that the Commission might well conclude that a retailer who for example failed to disclose that the fur was bleached or dyed might well default when it came to disclosure of the fact that used fur was contained in the garment.
> * * *

The Commission applied the same standard here. It concluded that "the incidents of misbranding have

constituted integral parts of the [petitioners'] over-all method of doing business, and an order directing full compliance with the labeling requirements of the statute in the future is fully justified" (Pet. App. 30a). The court of appeals' affirmance of this determination as within the scope of Commission discretion (Pet. 3a) clearly raises no issue warranting further review by this Court.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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